

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.74 OF 2004

Dr. Bal Mhatre ...Applicant
Vs.
Smt Malini K. Navalkar & Anr. ...Respondents

Ms Jyoti Singh for the Applicant.
Mr A.D. Gangal i/by R.V.Gangal for the Respondent
No.1.
Ms M.M. Deshmukh, A.P.P. for the Respondent-State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 29, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service for the Respondent No.2. The learned Advocate for the Respondent No.1 waives service. By consent taken up for hearing forthwith.

2. In this Revision Application, the challenge is to the Judgment and Order dated 30th December, 2002 passed by the Metropolitan Magistrate, 10th Court, Andheri, Mumbai. By the impugned Judgment and Order, the Applicant was convicted for the offence under section 500 of the Indian Penal Code. However, instead of sentencing him to any imprisonment, the learned Magistrate released the Applicant under section 3 of the Probation of Offenders Act after due admonition. The Applicant was directed to pay amount of Rs.3,000/- as compensation and Rs.2,000/- as costs

under section 5 of the Probation of Offenders Act to the complainant and other accused were acquitted. The Appeal preferred by the Applicant has been dismissed by the Additional Session Judge.

3. The Advocates appearing for the Applicant and the Respondent No.1 have tendered an Application under section 320 of the Code of Criminal Procedure, 1973 seeking leave to compound the offence. It is prayed that presence of the Respondent No.1 may be dispensed with. The said Application is taken on record and marked "X" for identification.

4. The Respondent No.1 is the original complainant and the conviction of the Applicant is in private complaint filed by the Respondent No.1. It is stated in the Application tendered on record that neither the Applicant nor the Respondent No.1 have any grievance against each other and both of them have agreed to withdraw the allegations against each other. It is stated that due to advanced age the Respondent No.1 is unable to attend this Court personally and have authorised her Advocate to file Application to compound the cases. The Advocates appearing for the parties stated that the application is signed by the Applicant and Respondent No.1. The conviction of the

Applicant is under section 255 of the said Code of 1973 for the offence under section 500 of the Indian Penal Code. Under sub-section (1) of section 320 of the said Code of 1973, the offence punishable under section 500 of the Indian Penal Code except such cases as are specified against section 500 of the Indian Penal Code in column No.1 of the table in sub section(2) of section 320 of the said Code of 1973 can be compounded by the person defamed. The present case is not covered by column 1 in table under sub-section (2) of section 320 of the said Code of 1973. Under sub-section 6 of Section 320 of the said Code of 1973, this court can in exercise of powers under section 401 of the said Code of 1973 allow any person to compound any offence which such person is competent to compound under section 320 of the said Code of 1973. In the present case, there is no previous conviction of the Applicant-accused.

5. Considering the nature of accusation in the private complaint filed by the Respondent No.1 and considering the averments made in Paragraph Nos.2 and 3 of the Application tendered on record, in my view, this is a fit case where powers under sub section (6) of section 320 of the said Code of 1973 read with section 401 of the said Code of 1973 should be

exercised and the offence should be treated as compounded. Hence, I pass the following order.

i) The offence is permitted to be compounded.

ii) In view of the compounding of the offence, the conviction of the Applicant under the Judgment and Order dated 30th December, 2002 passed by the Metropolitan Magistrate, 10th Court, Andheri, Mumbai in Case No.196/S/94 is quashed and set aside and the Applicant is acquitted.

iii) Rule is made absolute in above terms.

iv) Parties to act upon an authenticated copy of this order.

JUDGE